

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

| | | |
|--|---|----------------------|
| In the Matter of |) | |
| |) | |
| Service Rules for the 698-746, 747-762 |) | WT Docket No. 06-150 |
| and 777-792 MHz Bands |) | |
| |) | |
| Former Nextel Communications, Inc. |) | WT Docket No. 06-169 |
| Upper 700 MHz Guard Band |) | |
| Licenses and Revisions to Part 27 of |) | |
| the Commission's Rules |) | |
| |) | |
| Implementing a Nationwide, |) | PS Docket No. 06-229 |
| Broadband, Interoperable Public |) | |
| Safety Network in the 700 MHz |) | |
| Band |) | |
| |) | |
| Development of Operational, Technical and |) | WT Docket No. 96-86 |
| Spectrum Requirements for Meeting Federal, |) | |
| State and Local Public Safety |) | |
| Communications Requirements Through the |) | |
| Year 2010 |) | |

COMMENTS OF RURAL CELLULAR ASSOCIATION

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Summary

The timely roll-out of high-speed wireless broadband services across America will best be achieved by adoption of the Commission’s tentative decision to use performance requirements based on geographic benchmarks and a “keep what you use” rule. Another equally important factor is the availability of a sufficient amount of spectrum at the auction with small and mid-sized license areas.

700 MHz spectrum has uniquely favorable propagation characteristics which make it a superior near-term means to introduce high-speed wireless broadband service to rural areas for consumer, economic development and public safety purposes. Broadband service is increasingly important to rural area economic development, education and public safety functions. The Commission must seize this historic opportunity to adopt rules that ensure wireless services of the most advanced nature reach rural and metropolitan areas alike. Not the least of the benefits to be gained from wireless broadband service in rural areas are those that promote public health and safety. While the importance of rural access by first responders is well recognized, other examples of the social benefits of wireless broadband in rural areas include aid to patients in accessing online medical information to better their own personal health by contributing more effectively in patient-physician partnerships. Because the applications related to these bands are so socially valuable and the spectrum so rare, the need to advance public interests through purposeful formulation of Commission rules on this subject is imperative.

There are sound reasons to adopt stringent geography-based performance requirements. In order to realize the potential of 700 MHz services in rural areas it is vital to set milestones for build-out at several times during the initial license term. Strict performance requirements measured by geographic coverage will encourage licensees to make service

available in more of their license areas, and areas not served will become available to others without indefinite delay. But the Commission must make clear that it will review licensee construction showings and reject exaggerated claims of coverage where, for example, paired spectrum is involved and a customer response unit could not communicate with a base station considering applicable power limits. While some will argue that geographic build-out requirements amount to government intrusion into business decisions, or that they are inconsistent with “what has worked before,” the fact is that no area being served will be forfeited under a “keep what you use” plan. Areas not served and relinquished will become available to others with a different business model for service to rural areas. Broadband accessibility in rural areas will be realized, new technologies may be developed and efficiency will be served in a manner superior to a regime that relies solely on “substantial service” metrics.

700 MHz band plans should promote participation by companies of all sizes. The Commission’s assessment is on point. Licenses should be offered in both the Lower and Upper 700 MHz Bands in a manner that encourages applicants of diverse size to compete. This will stimulate interest in the auction and result in new and competitive service offerings in varied geographies - both urban and rural.

Auction procedures should not include blind bidding. Blind bidding does not suit the aims of the 700 MHz spectrum auction. Remedies to anticompetitive conduct already exist. Hiding bidders’ identities during the auction both inhibits the ability of small carriers to anticipate the availability of roaming agreements with leading bidders in nearby license areas and disadvantages entities with less-sophisticated valuation resources.

The stakes at hand are no less than the social and economic welfare of rural America for decades to come. Strict geographically-based performance requirements are a necessity.

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COMMENTS OF RURAL CELLULAR ASSOCIATION

Rural Cellular Association ("RCA"),¹ by its attorney, submits these comments in response to the rulemaking portion of the Commission's *Report and Order and Further Notice of Proposed Rulemaking* in the above-captioned dockets.² RCA commends the Commission for its

¹ RCA is an association representing the interests of approximately 100 small and rural wireless licensees providing commercial services to subscribers throughout the nation. RCA's wireless carriers operate in rural markets and in a few small metropolitan areas. No member has as many as 1 million customers, and all but two of RCA's members serve fewer than 500,000 customers. RCA was formed in 1993 to address the distinctive issues facing wireless service providers. The ability to gain reasonable access to auctioned spectrum in the 700 MHz Band presents one such issue.

² *Report and Order and Further Notice of Proposed Rulemaking*, WT Docket No. 06-150, FCC 07-72, released April 27, 2007 ("FNPRM").

tentative decision to adopt performance requirements based on geographic benchmarks and a “keep what you use” rule. In that manner licensees will have proper incentive to serve more of their license areas than would otherwise be minimally necessary under alternative population based standards or if the Commission were to rely solely upon the current “substantial service” requirement. While some might argue that geographic build-out milestones represent an intrusion into a licensee’s determination of a commercially reasonable level of construction, RCA disagrees and notes that the “keep what you use” aspect of the proposal assures a licensee that it need not engage in uneconomic build-out while at the same time making available to anyone with a different business model the opportunity to serve areas, undoubtedly rural, that the initial licensee elects to leave unserved after reasonable time periods have passed.

RCA also supports the Commission’s decision to make available a mix of geographic license size areas, including Cellular Market Areas (“CMAs”), Economic Areas (“EAs”) and Regional Economic Areas (“REAGs”). In particular, RCA agrees that a Lower 700 MHz Band with CMA and EA-sized paired spectrum licenses will stimulate interest in the auction from companies of various sizes with a variety of service plans, and that the Upper 700 Band calls for closer study of assorted and important issues. RCA urges the Commission to adopt an Upper 700 MHz bandplan that includes at least one paired license of at least 10 MHz with a geographic license size smaller than REAG, and preferable a CMA-sized area.

In these comments RCA will:

- I. Address the importance of the 700MHz spectrum as a superior near-term means to make available high speed wireless broadband service to rural areas for consumer, business and public safety purposes;
- II. Review the rationale for adoption of stringent geography-based performance

requirements in addition to the current “substantial service” requirement;

III. Comment on the proposed Lower 700 MHz Band plan and on five band plan proposals for the Upper 700 MHz Band; and

IV. Discuss concerns that smaller sized companies have with anonymous bidding procedures.

I. It is Imperative that the 700 MHz Licensing Plan Promote the Availability of Broadband Service to Rural Consumers and Businesses

The 700 MHz spectrum’s uniquely favorable propagation characteristics allow high-speed data services to be offered over large geographic areas with minimal terrestrial build-out. As a result, it will be possible for a licensee of this spectrum to offer broadband services in rural areas that could not economically be served using other spectrum available for commercial purposes.

The Commission has oft spoken to the gravity of making broadband services available to all citizens, both urban and rural. Rural area residents too often lack access to broadband service, while some who have access are without a choice of service providers and service plans. Meanwhile, economic development in rural areas is stymied by the reluctance of businesses to move to areas with inferior access to broadband service. Without job opportunities created by business activity young people typically move away from their homes in rural areas to seek opportunities in metro areas where infrastructure supports commercial activity. The pattern is familiar and destructive to rural communities, but the Commission has before it a unique opportunity to foster change. Carefully conceived rules for the licensing of 700 MHz spectrum and its use can change an environment of inferior communications service in rural areas to one that invites investment and business development.

The rules for licensing of 700 MHz facilities should encourage the delivery of wireless broadband to rural areas not only for commercial purposes but also to promote public safety in the community.³ Public safety services that benefit from spectrum usage will be State and local governmental entities and non-governmental users with the sole or principal purpose of protecting the safety of life, health, or property.⁴ Though this conjures thoughts of first-responders, other entities serve the public's safety in as important a capacity. After an ambulance delivers a patient, the hospital relies on wireless biomedical telemetry devices.⁵ These provide early detection of life-threatening physiologic developments.⁶ The future spectral requirements of these devices are unknown, but the requirements of telemedicine exist now and require attention. The Appalachian Regional Commission notes that

Through telemedicine, residents can have access to remote specialists that would otherwise be unavailable. Mobility-impaired patients can thus avoid the expense and hassle of traveling long distances for expert consultations. Telemedicine also brings instant access to distant specialists to support diagnostic and treatment services. And patients' with access can save money on prescription drugs ordered online and can take part in medical support groups.⁷

Even out of the hospital, rural consumer health substantially benefits from broadband services; patients with broadband access will be connected to a vast array of online resources. Patients as medical consumers are beginning to play a larger role in their individual treatments, and as this trend continues, high-speed access to these resources will play a larger part in promotion of

³ *FNPRM*, para. 4.

⁴ 47 U.S.C. 337(f).

⁵ AMERICAN HOSPITAL ASSOCIATION, REPORT OF THE AMERICAN HOSPITAL ASSOCIATION TASK FORCE ON TELEMETRY 3 (1998).

⁶ *Id.*

⁷ Appalachian Regional Center Online Resource Center, *Wireless Broadband Access in Appalachia*, <http://www.arc.gov/index.do?nodeId=1813> (last visited May 17, 2007).

wellness. Streaming audio broadcasts and podcasts are an emerging resource; they provide patient education and allow for more productive physician-patient partnerships. These partnerships lead to more informed medical decisions and promote overall wellness.

The 700 MHz auction will license the last piece of prime real estate left in wireless spectrum, providing bandwidth with the potential to bring significant public benefits. The Commission must seize this historic opportunity to adopt rules to ensure that advanced wireless services reach rural and metropolitan areas alike. Both license service areas and performance requirements need to be tailored to achieve that goal. RCA recommends the following performance and licensing measures to best assure that the potential of the upcoming 700 MHz spectrum auction is realized.

II. Strict Geography-Based Performance Requirements Should Be Associated with All 700 MHz Band Licenses to Be Auctioned

RCA endorses the Commission's proposal to adopt construction milestones based on geography, not population.⁸ One important aspect to providing a useful service on paired spectrum is that it must include a reliable response signal from the customer, not just a receivable signal from the base station. RCA urges the Commission to make clear in its performance requirements that it will review licensee construction showings and reject exaggerated claims of coverage where, for example, paired spectrum is involved and a customer response unit could not communicate with a base station considering applicable power limits.

RCA also wishes to respond to the following Commission inquiries:

Access to Spectrum and Provision of Service [FNPRM para. 212]

In order to maximize access to spectrum and the subsequent provision of service, the

⁸ FNPRM, paras. 212-213.

Commission must take steps to protect against misuse. The superior propagation characteristics of 700 MHz Band spectrum make it a uniquely valuable resource, but also a likely target for “stockpiling or warehousing.” 47 U.S.C. § 309(j)(4)(B). Because of this danger, RCA urged the Commission not to rely on its current “substantial service” standard of 47 C.F.R. § 27.14(a) and adopt stricter performance requirements for the remaining portions of the 700 MHz Band. The Commission adeptly responded to those comments and proposed a slightly modified version of RCA’s suggestions.⁹

Build-out requirements on Government Land [*FNPRM* para. 213]

RCA agrees that land owned or leased by the government can represent a sizable portion of the area in some markets and there should be flexibility in the rules to allow a licensee to exclude government lands from calculations associated with meeting build-out requirements. However, that flexibility should permit licensees to claim credit for service to government lands supplied with signal by a licensee. The benefit of signal over government lands serves a purpose: at a minimum it is an enhancement to public safety communications. It behooves the Commission to allow a licensee to claim credit for a useful signal over government lands where possible, or to exclude such lands from coverage calculations where it is impractical.

“Keep What You Use” and Rural Application thereof [*FNPRM* para. 213]

In general, geographic build-out under a “keep what you use” licensing regime is both pro-competitive and equitable. During the initial license term the licensee is able to keep the area in which it provides signal, and more. Any area left unserved which exceeds the percentage limits set by the proposed milestones will be available to other interested service providers. For example, a rural service provider that holds licenses for other spectrum in an area not served by a 700 MHz licensee should be eligible to acquire this unused spectrum and put it to use. A recent

⁹ *FNPRM*, para. 212.

poll demonstrated a majority extol this logic; it found that 66% of Americans disapprove of carriers winning licenses and then not using the spectrum.¹⁰ Competitiveness is advanced because all interested, new companies are free to bid for the unserved area;¹¹ market forces re-initiate competition in underserved areas and licenses are allocated to those bidders who value the spectrum most. This equitable competition also maximizes the public resource's revenue potential. When applied to terrains such as Alaska the question is begged, "what happens to economically undesirable tracts of land?" However, a "keep what you use" system provides the answer; if the spectrum has value it will be bid upon. If it is not built-out, as required by the proposed performance requirements, it should be returned for re-auction. What to do with unwanted land is a separate question. It may re-offered a second or third time with incentive systems, but to attempt to use it as litmus for "keep what you use" implementation misuses a mechanism designed to maximize revenue and market efficiency.

Consequences of Performance Standard Failures [FNPRM para. 214]

RCA continues to support the proposition that a licensee that fails to meet the required benchmarks should relinquish areas that lack signal until the reductions bring the percentage of land covered into compliance with performance requirements. This recognizes the licensee's investment in areas they have properly developed while transferring unused geographic areas back to the Commission so that it can be put to productive use after another auction.

"Keep What You Use" and License Terms [FNPRM para. 215]

The economic logic of the "keep what you use" rule suggests it is reasonable to have the

¹⁰ Press Release, M2Z Networks, National Survey Shows Strong Support for M2Z Networks' Free Wireless Broadband Proposal (April 19, 2007) at <http://www.m2znetworks.com/xres/uploads/documents/Polling%20Data.pdf>.

¹¹ RCA suggests that the 700 MHz licensee that elected not to serve the area should be ineligible to bid for the spectrum it relinquished on the first occasion of its re-auction.

licensee relinquish all unserved land at the completion of the license term; this both maximizes the spectrum's return to the Commission's "treasury" and promotes its most efficient use within the geography. This (1) creates an incentive for the licensee to complete all commercially reasonable build-out of their area by the end of license term; and (2) will result in greater broadband deployment to the benefit of constituents and the public safety community within the licensee's geographic area.

"Keep What You Use" and How Unused Spectrum Should be Reclaimed [FNPRM para. 216]

Licensees of other spectrum in areas relinquished by a 700 MHz licensee should be permitted to bid on re-offered licenses, subject to any 700 MHz aggregation rules the Commission may adopt in the future. If another service provider is interested in bidding on a geographic area of land, it suggests they have an economically rational and productive purpose for the license. However the licensee that relinquished the area (and any prior licensee or controlling party in the case of license assignments or transfers of control) should be ineligible to bid on licenses for areas they failed to serve, at least upon the first re-offering of the area. Other licensees in the area may benefit from valuable efficiencies in terms of logistics and regional expertise.

Application of Performance Requirements to REAGs [FNPRM paras. 217 and 219]

RCA agrees that performance requirements of 25%, 50% and 75% are appropriate at 3, 5 and 8-year benchmarks, respectively. Those performance requirements should be applied to REAG licensees based upon the component EAs of each REAG. This mechanism best promotes build-out in all portions of REAGs which are large by any measure. Where performance is not sufficient, spectrum can be reclaimed and reoffered in smaller geographic areas with EAs as reference points.

Licensees' Demonstration of Compliance [FNPRM para. 218]

RCA agrees that maps and other relevant data constitute appropriate methods of validation in reference to service provision. Maps were required to depict the reliable service area in the cellular services, and should serve as sufficiently valid for these purposes as well.

Counties are a Preferred Unit for Surrender of License Rights [FNPRM para. 218]

RCA believes that surrender of license rights according to county boundaries, where feasible, should be required when a licensee does not meet mid-term build-out milestones. The licensee should be permitted to proffer an area for surrender and the Commission should retain discretion to accept or reject the proffer according to its conformity with established political boundaries, especially counties. Once a proffer is accepted the surrendered area should then become available for re-licensing to others by auction. In this way rural unserved areas need not remain unserved and market forces prevail.

Geographic over Population-based Build-outs [FNPRM para. 220]

RCA strongly believes geographic build-outs are superior to a population-based mechanism. The government does not compel build-out, nor does failure to meet a benchmark result in a forfeiture of any served area. Each performance milestone during the initial license term entails a build-out percentage of less than 100%, allowing a licensee that provides any service at all to retain a percentage of its licensed area for expansion of service as economic circumstances permit. Geographic build-out performance requirements are far from draconian, they promote the extension of service to rural areas, and they serve the public interest by minimizing the potential for warehousing of unused spectrum.¹²

¹² In the event the Commission does not choose to adopt a geography-based series of performance requirements during the initial license term, the next best standard would be a “triggered keep what you use” system whereby, after a certain time passes and an area remains unserved, that area would become available for licensing to any other qualified applicant on a “first come” basis.

Geographic Build-out Requirements over “Substantial Service” as the Only Requirement
[FNPRM para. 220]

The Commission is not obligated to adopt the same performance requirements for all licenses of the same type; there is no requirement of symmetry. Due notice to the public with a comment opportunity are the governing standards that apply to rulemaking. The Commission may observe and improve upon weak performance standards as it prepares to auction new licenses. The Commission recognizes its responsibility

... to establish an appropriate level of regulation for the administration of CMRS. Such a regulatory regime will ensure that the marketplace – and not the regulatory arena – shapes the development and delivery of mobile services to meet the demands and needs of consumers, **except where relying on market forces might lead to a result that is harmful to competition or to consumers.** [fn omitted, emphasis added]¹³

Neither statute nor market logic requires symmetry in performance requirements; nor in fact is there symmetry in the Commission’s Rules as to construction requirements for all commercial radio service licenses of a certain type.¹⁴ The Commission has reasonable discretion under Section 332 of the Communications Act to impose new performance requirements on spectrum to be auctioned. Here that discretion should be used to adopt performance requirements that promote the rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas.¹⁵

¹³ *Third Report and Order*, GN Docket No. 93-252, 9 FCC Rcd 7988 (1994), para. 23 (initial implementation of § 3(n) and 322, adopting changes to technical, operational and licensing rules in pursuit of regulatory symmetry among mobile devices).

¹⁴ See, for example, Section 24.203(b) which sets out a different construction obligation for 15 MHz C-Block PCS licenses that resulted from disaggregation according to a particular Commission Report and Order than for 15 MHz C-Block licenses that result from disaggregation for other reasons.

¹⁵ See Section 309(j)(3)(A) of the Communications Act which states such a requirement for the “Design of Systems of Competitive Bidding.”

RCA and other commenters who sought revision of performance requirements are appreciative that the Commission has heeded their calls.¹⁶ The proposed revisions will allow for innovative applications in the 700 MHz spectrum and better service in rural areas. The Commission's tightening of standards productively pursues the goal of motivating licensees to serve rural areas in a reasonably prompt manner. Where that does not occur, others who have a plan to do so must have the opportunity to secure spectrum rights without extended delay.

III. Band Plan Proposals

The Commission should maximize efficiency in its allocation of the available spectrum by issuing a mix of licenses with service areas of varying sizes. Auctioning spectrum licenses with a plan that includes CMAs allows bidders to target specific areas. Small license areas allow bidders to acquire precise geographic segments without wasteful capture of extraneous areas that may be better served by alternate providers. This allocation of a public resource maximizes the efficiency in license assignment and also has potential to maximize benefit to the U.S. Treasury by enabling more interested parties to bid.

A. Lower 700 MHz Band

The Commission recently sought comment as to which geographic license area classifications will best serve the public interest in the upcoming auction. The proposed blocks include spectrum divided into A, B, C and E blocks. RCA believes the classifications specified for the Lower Band of 700 MHz spectrum in the Commission's *FNPRM* meet public needs.

RCA supports the Commission's proposal to license the A Block as EAs, the B Block as CMAs, and the E Block as REAGs. RCA believes these designations well serve providers of

¹⁶ Others that supported geographic-based performance requirements include Cellular South Licenses, Inc. and the Vermont Department of Public Service, *et al.*

various sizes and, most importantly, their consumers.¹⁷

Auctioning the A Block as a 12 MHz paired block divided into EAs, will allow large, medium and even some small carriers an opportunity to bid on these licenses. Enhancing competition for these licenses by increasing the pool of bidders increases both the probable return and the likelihood the spectrum will be efficiently utilized by the winner.

In Reply Comments submitted October 20, 2006, RCA requested that Block B in the Lower 700 MHz Band be offered in a manner that would better serve the nation's 734 CMAs.¹⁸ As such, RCA members are excited about the opportunity to participate given the Commission's tentative conclusion to assign Block B with CMA boundaries. Licensing this band as such will also allow larger carriers to target areas in which they genuinely intend to provide service, while still allowing small carriers and new entrants opportunities to introduce services in heretofore unserved rural and high-cost areas. The number of small and rural service providers currently holding CMA licenses in Block C demonstrates their willingness to compete for spectrum when an opportunity to do so is presented. The end result is provision of advanced services to underserved markets.

RCA supports the Commission's proposal to auction unpaired Block E spectrum in REAGs. The use for which this spectrum is optimal – one-way applications such as video streaming to mobile devices – may possibly be best provided on a large geographic basis.

B. Upper 700 MHz Band

RCA, as indicated in the *Balanced Consensus Plan*, also supports a mix of license sizes in the 747-762 and 777-792 MHz bands. A balanced mix fosters competition and thus promotes

¹⁷ RCA is a member of a coalition that presented the *Balanced Consensus Plan*. The coalition endorses this bandplan for the Lower 700 MHz Band.

¹⁸ See "Reply Comments of Rural Cellular Association," WT Docket No. 06-150, at 1 (filed October 20, 2006).

the public interest. Proof of the point is evident from the over \$13 billion success of the AWS-1 auction.¹⁹

1. Proposals Based on Elimination of the Guard Band Block B

The *FNPRM* presents two options for licensing spectrum blocks if the Upper 700 MHz Guard Band B is consolidated with the rest of commercial spectrum in order to enhance its more efficient and effective use, embodied in Proposals 1 and 2.²⁰ RCA believes Proposal 2 better serves the public interest by allowing for greater competition while still allowing for aggregation if a larger entity could put the license to more productive use.

a. Proposal 1

The first proposal would establish a “new 22-megahertz C Block (comprised of two 11-megahertz blocks of paired spectrum), and a new 12-megahertz D Block (comprised of two 6-megahertz blocks of paired spectrum)”, both to be licensed on a REAG basis.²¹ RCA opposes this band plan because (1) it limits competition and (2) there is a better alternative.

Only very large entities can possibly afford and utilize REAG licenses; designating this band as such unnecessarily limits the number of bidders on very valuable spectrum. The B guard band is not inherently better suited for REAG use. RCA opposes Proposal 1 in that it is exclusionary, wasteful and inefficient.

While large entities may have an interest in 22 MHz of paired spectrum, its offering on this basis is conspicuously unfair. There is a better way to allocate this scarce public resource and plan for an equitable distribution of spectrum that will result in the delivery of advanced

¹⁹ FCC, *Summary of Round Results: FCC Advanced Wireless Services Auction No. 66*, http://wireless.fcc.gov/auctions/66/charts/66press_2.pdf (last visited May 17, 2007).

²⁰ *Report and Order and Further Notice of Proposed Rulemaking*, WT Docket No. 06-150, Released April 27, 2007, paras. 184-193.

²¹ *Id* at para. 190.

wireless technology to underserved areas of America.

Another fault with this plan is its proposed utilization of package bidding. Package, or combinatorial, bidding is complex, it uniquely benefits larger bidders over smaller ones, and it introduces potential for “gaming” the system to acquire desirable licenses at a discount if packaged with the most valuable of licenses. This auction should have ground rules that allow bidders who value particular blocks of spectrum the most to have the opportunity to acquire that spectrum. Combinatorial bidding has unintended consequences that are apparent and does not promote this goal.

Finally, Proposal 1, which would offer spectrum in only two blocks, could further restrict the available Upper Band spectrum if the Commission also adopts the Frontline proposal. RCA takes no position on the Frontline proposal, but, combined with this band plan, the Frontline proposal would result in the ability of only a select few bidders having the opportunity to bid for spectrum in the Upper 700 MHz Band. This is an unwelcome and unnecessary result.

b. Proposal 2

The second proposal offered for comment in the *FNPRM* contemplates using a mix of REAG, EA and CMA geographic licensing areas. This would “approximate the very successful balanced mix adopted by the commission in the recent AWS-1 auction”.²² The Commission seeks comment on whether this proposal would provide interested bidders with the flexibility to aggregate smaller markets, whether the plan would offer new entrants an opportunity to provide broadband, and whether to consider licensing these blocks on a different geographic basis.

RCA’s view is that Proposal 2 would provide all interested bidders an opportunity to aggregate smaller markets. Small markets can always be combined to form large geographic areas. This proposal is not exclusionary. Small license area sizes allow operators of all sizes to

²² *Id* at para. 192.

participate and they allow all carriers to pursue the exact areas they intend to serve. While it is possible that the total cost to aggregate a number of small licenses may be higher than the cost of acquiring a corresponding large geographic license, this is the mark of a competitive auction and is less likely to result in inefficient hoarding of spectrum or its underutilization.

Lastly, new entrants could potentially provide alternatives to current broadband solutions. Auctioning spectrum on an equal opportunity basis does not in any way preclude introduction of advanced wireless services to consumers.

2. Proposals Based on Modified 700 MHz Guard Bands

The shift of guard bands A (746-747/776-777 MHz to 762-763/792-793MHz) and B (762-764/792-794 MHz to 775-776 MHz/805-806 MHz), with B's concomitant reduction (4 MHz to 2 MHz), would make 32 MHz available for commercial licensing in the Upper 700MHz Band. RCA does not favor one of these proposals over another, but strongly advocates a mix of license area sizes that will not artificially favor large wireless incumbents over worthy and committed smaller carriers and other potential bidders. In the spirit of avoiding an excessive aggregation of spectrum by nationwide carriers and in the interest of "disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women," RCA advocates for whichever finalized proposal results in the greatest mix of licenses.²³

a. Proposal 3

By this proposal, the C block would be allotted 22 MHz (11 MHz paired), and the D block would be licensed as a 10 MHz block (5 MHz paired). If the incumbent licensees in this band do come to an agreement, and Proposal 3 is implemented, RCA respectfully requests that the geographic license plan include a mix. Ideally the C block would be licensed on an EA basis,

²³ 47 U.S.C. § 309(j)(3).

and the D block on a CMA basis. This would both maximize the number of bidders, likely increasing the auction price, and allow for aggregation if a larger provider sought to target specific areas. Licensing both C and D blocks on a REAG basis would be detrimental to competition and presumably result in a lesser return on this limited public resource.

b. Proposal 4

RCA continues to stress the import of licensing spectrum in a mix of sizes. Licensing both Blocks C and D, each with 11 MHz of paired spectrum, on a REAG basis would not be preferred, even if the E block of 10 MHz paired spectrum would be auctioned on an EA basis. Optimally, the Commission would decide to license the C and D blocks according to REAGs and EAs, and the E Block by CMAs.

i. Without Frontline

This plan would divide the spectrum into an 11 MHz C Block licensed as REAGs, an 11 MHz D Block licensed as REAGs, and a 10 MHz E Block licensed as EAs.

As stated above in comments on Proposal 1, RCA does not believe package bidding serves the interest of competition. This remains the case for C and D blocks. RCA is pleased with the Commission's stated intention not to implement any new manner of package bidding, and requests the Commission not venture into such pursuit on this occasion.²⁴ The harms of package bidding include: (1) distortion of an equitable balance between small and large licensees; and (2) the potential for either reactivation or coordination issues, depending on the nature of implementation details. First, a distortion would favor larger entities because smaller bidding entities encounter a "threshold problem" by nature of their limited resources. Second, the timing of bid finalization could create scenarios whereby a winning bid on one license triggers reactivation of a dormant bid or requires simultaneous submission of prospectively losing bids

²⁴ *FNPRM*, para. 69.

on elements of the package. Aggregation of spectrum is possible without instituting a measure which would unduly complicate the bidding process and negatively affect small carriers which are less likely to be able to navigate the intricacies of complex coordinated bidding efforts. The inclusion of CMA licensing areas in the mix reinforces the ease of ostensible aggregation. RCA believes licensing C and D blocks separately, and on a non-REAG basis is preferable.

ii. With Frontline

RCA would prefer that the 11 MHz of Block C spectrum be licensed on a CMA basis rather than on a REAG basis. This would create substantial market opportunities for rural providers and, once again, larger competitors would still have the option to aggregate a series of small licenses to build larger territories. RCA has no objection to Block D's being licensed on an EA basis. However, if Block E should be licensed as REAG, licensing Block C based upon CMA boundaries would be more equitable. This would equitably divide the available spectrum and provide lower barriers of entry for new entrants, bringing with it innovative business plans and, perhaps, new technologies. Applications for licenses in the 700 MHz spectrum are stated to be "subject to competitive bidding."²⁵ For the force of this statute to ring true, a diversity of licensing areas should be made available. Keeping licenses free of burdensome package bid restrictions aids in shaping a competitive environment.

If a proposal compatible with Frontline's is adopted the Commission should also state that commercial operators that make use of the shared spectrum must enter into automatic roaming agreements with one another to allow customers to have access to voice and data services as they travel from one area to another. With a common standard for operation there is no good reason why any participating commercial carrier should be denied a roaming agreement on just and reasonable, non-discriminatory terms, subject to review by the Commission on an as-

²⁵ 47 C.F.R. 27.501.

needed basis through the complaint process. Reasonable presumptions as to particular terms can be adopted as the Commission has the opportunity to consider issues that may arise.

c. Proposal 5

This proposal involves a C block of 11 MHz being auctioned on an REAG basis and D and E blocks of 11 MHz and 10 MHz, respectively, being auctioned on an EA basis. RCA believes this proposal could be vastly improved if the E block is offered on a CMA basis. That would provide for a diverse mix of license area sizes that should benefit both the auction and rural consumers. Additionally, RCA wishes to re-voice its opposition to package bidding. RCA believes it is not appropriate at this time because it adds an unneeded level of complexity which disadvantages small, predominantly rural, providers. The AWS-1 auction sufficiently demonstrated that considerable amounts of capital can be raised without the addition of this mechanism that potentially skews results.²⁶

IV. Anonymous Bidding Procedures are Detrimental to Smaller Companies in Auctions

Competitive Bidding Procedures [*FNPRM* paras. 246 *et seq.*]

Blind, or anonymous, bidding is not appropriate for the 700 MHz spectrum auction. Anticompetitive behavior has severe sanctions and any conspiracy or combination through signaling or other manner of communication in an attempt to interfere with competition should be punished. However, many of RCA's smaller carriers would be negatively impacted if unable to anticipate the availability of roaming agreements with leading bidders in nearby license areas. Smaller entities also benefit to the extent spectrum valuation is a resource-intensive task and

²⁶ FCC, *Summary of Round Results: FCC Advanced Wireless Services Auction No. 66*, http://wireless.fcc.gov/auctions/66/charts/66press_2.pdf (last visited May 17, 2007).

often find it helpful to take note of how larger companies value spectrum in nearby markets. Cloaking auction information would only exacerbate competitive inequities based on entity size.

V. Conclusion

RCA members, about 100 nationwide, need 700 MHz spectrum to deliver the next generation of wireless services to rural America. Under the Commission's revised performance requirements and with a realignment of spectrum in pursuit of a more diverse mix of license area sizes, that need will be satisfied.

Performance requirements are the best and probably only way to assure that rural markets receive the benefits of next generation wireless services. RCA supports the adoption of geographic-based build-out requirements during the initial license term to speed the availability of 700 MHz services in rural areas. If the initial licensee does not build the rural areas it should be obligated to surrender the rights so that the opportunity to provide service is available to the willing. The RCA - now Commission - proposal will not be well received by those who have no plans to serve rural areas but its adoption will result in broadband service availability and competition in rural areas for the benefit of consumers and as a means to promote economic development and public safety.

A licensing and service plan that fails to promote broadband service availability to rural areas within 3, 5 and 8 years of the Digital Television Transition is not an acceptable plan for America.²⁷

Respectfully submitted,

RURAL CELLULAR ASSOCIATION

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²⁷ These comments were prepared with the assistance of W. Adam Thomas, law student at the University of Pittsburgh.

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